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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,531	03/17/2004	Debra DallaGrana Miller	062834-0227	2299
23428 7590 12/17/2010 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER				
FEENEY, BRETT A				
ART UNIT		PAPER NUMBER		
3624				
MAIL DATE		DELIVERY MODE		
12/17/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/801,531

**Applicant(s)**

MILLER ET AL.

**Examiner**

BRETT FEENEY

**Art Unit**

3624

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 December 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(g).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_  
Claim(s) objected to: \_\_\_\_\_  
Claim(s) rejected: 1-18.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/LYNDA C JASMIN/  
Supervisory Patent Examiner, Art Unit 3624

Continuation of 3. NOTE: The amendments to the claims would change the interpretation thereof and therefore would require an updated search and further consideration.

Continuation of 11. NOTE: In response to Applicant's assertion that Huang/Landvater, fails to disclose the feature of claim 1 where the product amount is calculated during a current promotion based on the calculated product demand level where POS data is obtained during the current promotion, the Examiner respectfully disagrees. As was noted in the FINAL Office action mailed 09/30/2010, Landvater teaches at column 5, lines 7-17; "determining time-phased product sales forecasts for a retail store supply chain using product sales data generated by retail stores in the chain and at least one of: by determining an initial projected sales amount for a product before a promotion for said product to account for increased demand as a result of said promotion [i.e. where POS data is obtained during the current promotion]; and by determining said projected sales for a product during a promotional period [i.e. the product amount is calculated during a current promotion based on the calculated product demand level] for said product on a daily basis using daily sales data generated during said promotional period for said product." The Examiner respectfully notes that whether the data is calculated for a distribution center, a retail store, a CEO, a market researcher or any other entity, the steps of the method remain the same. The individual(s) that the rolling promotional forecast is calculated for is non-functional and does not alter the method step (algorithmically or otherwise) nor alter the underlying structure of the system/media performing the method. Therefore, the rejection under §103 is maintained. In addition, the Examiner respectfully notes, referring to the FINAL Office action mailed 09/30/2010, that Huang/Landvater teaches DCs, retail stores and the like and calculating aggregated and disaggregated forecasts at all levels of the relational supply chain.

The Examiner respectfully notes that in an effort to advance prosecution, Applicant should consider the applied references and other references cited on the PTO-892 when amending claims to recite a particular algorithmic implementation of for promotional forecasting, as CPFR is a well known and crowded field of endeavour. For example Applicant may consider, as described in the instant specification, amending claims to recite forecasting according to determined predictor/predictee indices and how the calculated index value is applicable to each predictor/predictee relationship and forecast.